

San Francisco Co Assessor-Recorder
Doris M. Ward, Assessor-Recorder

RECORDING REQUESTED BY:
OES LP

WHEN RECORDED MAIL TO:

DEPARTMENT OF TOXIC
SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710
ATTN: BARBARA J. COOK, P.E.

DOC - 98-6441956-00

Check Number 41003

Monday, SEP 28, 1998 11:01:11

REC \$17.00|PAG \$13.00|MIC \$1.00

STP \$12.00|

Ttl Pd \$43.00

Nbr-0001023510

REEL H228 IMAGE 0243

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SPACE ABOVE THIS LINE RESERVED FOR RECORDERS USE

COVENANT
TO RESTRICT USE OF PROPERTY
725 Second Street, San Francisco

This Covenant and Agreement ("Covenant") is made on the 14 day of September, 1998 by OES LP, a California Limited Partnership ("Covenantor"), which is the owner of record of certain property situated in San Francisco, County of San Francisco, State of California, and by the Department of Toxic Substances Control (the "Department"). The property which is the subject of this Covenant is as described in Exhibit "A" (the "Property") and is shown in Exhibit "B" (Site Plan). Exhibit "A" and Exhibit "B" are attached hereto and incorporated herein by this reference. Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment. The Parties also intend that the San Francisco Department of Public Health, Bureau of Environmental Health Management ("SFDPH") be a third-party beneficiary of this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01 Site Description and History. The Property is approximately 2 acres and is located at 725 Second Street in San Francisco. The property is bounded by Townsend Street to the north, Site K (Seawall Lot 333) to the east, King Street to the south, and Second Street to the west. San Francisco Bay is less than 200 feet to the east. The property was created by landfilling during the 1880-1920 time period. Various commercial users occupied the Site since the 1920s.

1.02 Site Investigations. A Site history was developed in 1989 and soil samples were collected and analyzed in 1990 pursuant to Part II, Chapter 10, Article 20 of the San Francisco Municipal Code (Article 20) as amended by Ordinance 253-86 (Maher Ordinance), dated June 27, 1986. A Preliminary Risk Evaluation was performed in 1997 which compared the chemical

levels to the U.S. Environmental Protection Agency, Region 9 Preliminary Remedial Goals (PRGs). Identified chemicals of concern in soils include lead and polynuclear aromatic hydrocarbons (PNAs). Exhibit "C" contains a table listing the highest levels of the chemicals detected. Arsenic, lead, benzo(a)pyrene, benzo(a)anthracene, benzo(b)fluoranthene, dibenzo(a,h)anthracene are present at levels above residential PRGs.

1.03 Site Mitigation. The San Francisco Department of Public Health, Bureau of Environmental Health Management (SFDPH) approved the site mitigation plan for the Site on May 29, 1997. The building foundation caps the soil and prevents future contact between it and the humans living in the high rise. SFDPH then referred the site to DTSC for completion of this deed restriction.

ARTICLE II DEFINITIONS

2.01 Cap. "Cap" shall mean the protective cover used to isolate contaminated soils on the Property from human or environmental exposure. The Cap at this Site consists of the building foundation which covers the entire Property.

2.02 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.03 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.04 Occupant(s). "Occupant(s)" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05 Owner(s). "Owner(s)" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.06 SFDPH. "SFDPH" shall mean the San Francisco Department of Public Health, Bureau of Environmental Health Management and shall include its successor agencies, if any.

ARTICLE III GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased,

sold, hypothecated, encumbered, and/or conveyed. Each and every of the Restrictions: (a) shall run with the land pursuant to Civil Code section 1471; (b) shall inure to the benefit of and pass with each and every portion of the Property; (c) is for the benefit of the Department and SFDPH, and shall be enforceable by and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners/Occupants. Pursuant to Civil Code section 1471(b), the provisions of this Covenant shall be binding upon each successive owner, during his or her ownership, of any portion of the Property and upon each person having any interest therein derived through any owner thereof. All successive owners of the Property are expressly bound by this instrument for the benefit of the Department and SFDPH.

3.03 Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

ARTICLE IV DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

4.01 Soil Management.

- a. No activities which will disturb the soil beneath the buildings shall be permitted on the Property without compliance with the SFDPH's approved Worker Health and Safety, Soil Management and Dust Control Plans.
- b. Any contaminated soils brought to the surface by grading, excavating, trenching or backfilling shall be managed in accordance with all applicable provisions of the state and federal laws and regulations.

4.02 Non-Interference with Cap.

- a. No activities which will disturb the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall be permitted on the Capped Property without prior review and approval by the SFDPH.
- b. No drilling for drinking water shall be permitted on the Property without prior written approval by SFDPH.
- c. All uses and development of the Capped Property shall preserve the integrity of

the Cap.

- d. Any proposed alteration of the Cap shall require written approval by the SFDPH.
- e. Covenantor shall notify the SFDPH of each of the following: (i) The type, cause, location and date of any disturbance to the Cap which could affect the ability of the Cap to contain subsurface hazardous wastes or hazardous materials in the Capped Property, and (ii) the type and date of repair of such disturbance. Notification to the SFDPH shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.03 Access. Covenantor agrees that the Department and SFDPH shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department or SFDPH in order to protect the public health and safety.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Violation of this Covenant shall be grounds for the Department or SFDPH to file civil and/or criminal actions against the Covenantor and/or Owner as provided by law.

ARTICLE VI VARIANCE AND TERMINATION

6.01 Variance. Any Owner(s) or, with the Owner(s)' written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233.

6.02 Termination. Any Owner(s) or, with the Owner's (s') written consent, any Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234.

6.03 Term. Unless modified or terminated in accordance with Paragraphs 6.01 or 6.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

7.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To "Covenantor": One Embarcadero South, LP
6335 El Camino del Teatro
La Jolla, California 92037
Attn: Michael Kriozere

With Copy to:
Luce, Forward, Hamilton & Scripps, LLP
121 Spear Street, Suite 200
San Francisco, California 94105
Attn: Jon K. Wactor, Esq.

To "Department": Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attn: Chief, Site Mitigation Branch

To "SFDPH": San Francisco Department of Public Health
Bureau of Environmental Health Management
1390 Market Street, Suite 210
San Francisco, California 94102
Attn: Director

7.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

7.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

7.05 Recordation. This instrument shall be executed by the Covenantor and by the Site Mitigation Branch Chief, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of San Francisco within ten (10) days of the

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date of execution.

7.06 References. All references to Code sections include successor provisions.

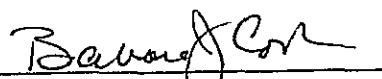
IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

COVENANTOR
OES LP

By: 
Michael Kriozere

Date: 8/11/98

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 
Barbara J. Cook, Branch Chief
Northern California-Coastal Cleanup Operations Branch

Date: 9/14/98

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PARCEL I:

BEGINNING at the point of intersection of the northeasterly line of 2nd Street and the Southeasterly line of Townsend Street: running thence north $45^{\circ} 08' 09''$ east along said line of Townsend Street 140.25 feet to the southwesterly line of the parcel of land described in the Deed from Southern Pacific Company, a corporation, to California Pacific Title Insurance Company, a corporation, dated December 15, 1945, recorded December 26, 1945, in Book 4377 of Official Records, at Page 37, in the office of the Recorder of the City and County of San Francisco, State of California: thence at a right angle south $44^{\circ} 51' 51''$ east along the southwesterly line of the parcel described in said Deed 74.61 feet: thence southeasterly continuing along said southwesterly line on a curve to the right, tangent to last described course, having a radius of 264.75 feet, through a central angle of $7^{\circ} 21' 30''$, an arc distance of 34.00 feet to a point: thence described in said Deed 25.10 feet: thence north $5^{\circ} 10' 21''$ west continuing along last said southeasterly line, 125.91 feet to said southeasterly line of Townsend Street: thence north $45^{\circ} 08' 09''$ east along said line of Townsend Street 34.27 feet to the southwesterly line of Gale Street now closed: thence at a right angle south $44^{\circ} 51' 51''$ east along said line of Gale 275.00 feet to the northwesterly line of King Street: thence at a right angle south $45^{\circ} 08' 09''$ west along said line of King Street 275.00 feet to the northeasterly line of 2nd Street: thence at a right angle north $44^{\circ} 51' 51''$ west along said line of 2nd Street 275.00 feet to the point of beginning, containing an area of 1.599 acres, more or less.

BEING a portion of South Beach Block No. 9.

Parcel II:

BEGINNING at the point of intersection of the southeasterly line of Townsend Street and the southwesterly line of Gale Street, as said street existed prior to the closing of any portion thereof: running thence southeasterly along said southwesterly line of Gale Street 275 feet to the northwesterly line of King Street: thence at a right angle northeasterly along said line of King Street extended 20 feet to the former center line of Gale Street: thence at a right angle northwesterly along said center line of Gale Street 275 feet to the southeasterly line of Townsend Street extended: thence at a right angle southwesterly along said southeasterly line of Townsend Street extended 20 feet to the point of beginning.

BEING a portion of Gale Street, now closed.

EXHIBIT A

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G003844

Excepting from said Parcel I and Parcel II those portions thereof lying below a depth of 500 feet, measured vertically, from the contour of the surface of said property, as reserved in the Corporation Grant Deed from Southern Pacific Transportation Company, a Delaware corporation, to Campeau South Beach Properties, a California limited partnership, recorded December 3rd, 1980 in Book D110 of Official Records, Page 989, which reservation is subject, however, to the condition that said Southern Pacific Transportation Company, a Delaware corporation, or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of said property or any part thereof lying between said surface and 500 feet below said surface.

Parcel III:

BEGINNING at a point on the southeasterly line of Townsend Street, distant thereon northeasterly 240.73 feet from the northeasterly line of 2nd Street; running thence southwesterly along said southeasterly line of Townsend Street 100.48 feet; thence at a right angle southeasterly 74.61 feet; thence along a curve to the right, tangent to last described course, having a radius of 264.75 feet, through a central angle of $7^{\circ} 21' 30''$, an arc distance of 34.00 feet to a point; thence northeasterly, deflecting $124^{\circ} 57' 34''$ to the left from the tangent to last described curve at last mentioned point, 25.10 feet; thence northerly deflecting $22^{\circ} 42' 26''$ to the left 125.91 feet to the point of beginning.

BEING a portion of South Beach Block No. 9.

EXHIBIT B

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STANFORD STREET

3788

3789

3789

COLIN P. KELLY JR. STREET

TOWNSEND STREET

3794

2ND STREET

3793

SITE

3792

KING STREET

3794

3801

THE EMBARCADERO

Reference: City and County of San Francisco, Recorder's Office

MAP NOT TO SCALE



Geo/Resource Consultants, Inc.
GEOLOGISTS / ENGINEERS / ENVIRONMENTAL SCIENTISTS
505 BEACH STREET, SAN FRANCISCO, CALIFORNIA 94133

Job No. 1921-001 Appr. _____ Date 2/97

SITE MAP
ONE EMBARCADERO SOUTH
(SITE L / 725 SECOND STREET)
SAN FRANCISCO, CALIFORNIA

FIGURE

2

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EXHIBIT C

CHEMICALS EXCEEDING RESIDENTIAL PRELIMINARY REMEDIAL GOALS

Chemical Name	Maximum Concentration (mg/kg)	Residential Preliminary Remedial Goal (mg/kg)
Arsenic	74	0.38
Lead	820	400
Benzo(a)anthracene	10.9	0.61
Benzo(b)fluoranthene	49.3	0.61
Benzo(a)pyrene	92.1	0.061
Dibenzo(a,h)anthracene	37.1	0.061

STATE OF CALIFORNIA)
)
COUNTY OF San Diego)

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On 8-11-98, 1997 before me, a Notary Public in and for State of California, personally
appeared

Michael W. Kridzer personally known to me or proved to me on the basis of satisfactory evidence
to be the person whose name is subscribed to the within instrument and acknowledged to me that
he/she executed the same in his/her authorized capacity, and that by his/her signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the
instrument.

WITNESS my hand and official seal.



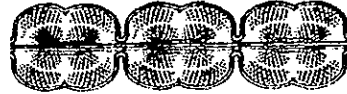
Misty J. Ray
Notary's Signature

CALIFORNIA

G441956



ALL-PURPOSE



ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF Alameda

On 9-14-98 Before me, Mary Ann Harrel, Notary Public
DAY NAME TITLE OF OFFICER E.G. TAXI DRIVER NOTARY PUBLIC

personally appeared, BARBARA J. COOK
~~personally known to me (or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized
capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Mary Ann Harrel
NOTARY PUBLIC SIGNATURE

(SEAL)



OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT Covenant - To Restrict Use of Property

DATE OF DOCUMENT

9-14-98

NUMBER OF PAGES

10

SIGNER(S) OTHER THAN NAMED ABOVE MICHAEL KRIOZERE